

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA

CARPENTERS HEALTH AND SECURITY  
TRUST OF WESTERN WASHINGTON;  
CARPENTERS RETIREMENT TRUST OF  
WESTERN WASHINGTON; CARPENTERS-  
EMPLOYERS VACATION TRUST OF  
WESTERN WASHINGTON; and  
CARPENTERS-EMPLOYERS  
APPRENTICESHIP AND TRAINING TRUST  
OF WESTERN WASHINGTON,

Plaintiffs,

v.

LEWIS CONCRETE, INC., a Washington  
corporation,

Defendant.

Cause No. 18-cv-5071

COMPLAINT FOR MONETARY  
DAMAGES

**I. PARTIES**

1.1 Plaintiff Carpenters Health and Security Trust of Western Washington (“Carpenters Health Trust”) is a Taft-Hartley trust fund established to provide and maintain hospital, medical, dental, vision, disability or death benefits and any other similar benefits, or any combination thereof as the Trustees may determine in their discretion for the benefit of the Employees and their beneficiaries. The Carpenters Health Trust maintains its principal office in Seattle, King County, Washington.

1.2 Plaintiff Carpenters Retirement Trust of Western Washington (“Carpenters Retirement Trust”) is a Taft-Hartley trust fund created to provide retirement and associated death benefits for employees and their beneficiaries. The Carpenters Retirement Trust maintains its principal office in Seattle, King County, Washington.

1.3 Plaintiff Carpenters-Employers Vacation Trust of Western Washington (“Carpenters Vacation Trust”) is a Taft-Hartley trust fund created to provide vacation benefits for employees. The Carpenters Vacation Trust maintains its principal office in Seattle, King County, Washington.

1.4 Plaintiff Carpenters-Employers Apprenticeship and Training Trust Fund of Western Washington (“Carpenters Apprenticeship Trust”) is a Taft-Hartley trust fund created to defray, in whole or in part, costs of apprenticeship or other training programs for the education of apprentices and journeymen carpenters. The Carpenters Apprenticeship Trust maintains its principal office in Seattle, King County, Washington.

1.5 The Plaintiffs are commonly known as the Carpenters Trusts of Western Washington (or the “Carpenters Trusts”).

1.6 Defendant Lewis Concrete, Inc. (“Lewis Concrete”) is a Washington corporation with its principal place of business in Tacoma, Pierce County, Washington. Lewis Concrete’s owner, Tracy Lewis, is the company’s registered agent.

## **II. JURISDICTION AND VENUE**

2.1 This Court has exclusive jurisdiction pursuant to §502(e)(1) of the Employee Retirement Income Security Act of 1974 (“ERISA”), codified at 29 U.S.C. §1132(e)(1).

2.2 Venue in this Court is proper pursuant to §502(e)(2) ERISA, codified at 29 U.S.C. §1132(e)(2), and pursuant to agreement between the parties.

### III. FACTS

3.1 On or about June 4, 2015, Tracy Lewis, identifying himself as the “Owner” of Lewis Concrete, executed a Project Agreement with the Pacific Northwest Regional Council of Carpenters (the “Union”). The Project Agreement incorporates by reference the terms and conditions of the 2012 – 2015 Agreement between Associated General Contractors of Washington and Carpenters, Piledrivers, and Millwrights of the Pacific Northwest Regional Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America (the “Master Labor Agreement”):

1. DESIGNATED LABOR AGREEMENT: The employer adopts and agrees to abide by the following Labor Agreement:

☒ Western & Central WA Master Labor Agreement Rep by:  
AGC of Western WA Effective: 6/1/12 to 5/31/15.

3.2 The Project Agreement was for work to be performed on the Peoples Community Center Pool Improvements project, in Tacoma, Pierce County, Washington.

3.3 By signing the Project Agreement, Lewis Concrete agreed to make fringe benefit contributions to the Carpenters Trusts and be bound by the terms and conditions of their respective trust agreements:

6. TRUST FUND OBLIGATIONS: The undersigned Employer hereby becomes a party to the applicable Trust Agreements for the trust funds or their successors identified in the designated Labor Agreement. The Employer agrees to be bound by the written provisions and procedures of said Trust Agreements, and any present or future amendments, and so any successor Trust Agreements. Employer accepts as its lawful representatives, the employer trustees who are now or who may hereafter serve on the Board of Trustees.

3.4 Prompt payment of wages and fringe benefit contributions is an essential term of the Project Agreement.

1           3.5     The Carpenters Trusts are beneficiaries under the terms of the Project  
2 Agreement and the Master Labor Agreements.

3           3.6     As a signatory to the Project Agreement, as discussed above, Lewis Concrete  
4 agreed to the terms of the (i) Carpenters Health & Security Trust of Western Washington;  
5 (ii) Carpenters Retirement Trust of Western Washington; (iii) Carpenters-Employers  
6 Vacation Trust of Western Washington; and (iv) Carpenters-Employers Apprenticeship and  
7 Training Trust of Western Washington.

8           3.7     Lewis Concrete's obligations under the Carpenters Health Trust are set forth  
9 in Article II, Sections 8 – 13, and Article IV, Section 17 of the Revised Trust Agreement of  
10 the Carpenters Health and Security Trust of Western Washington, dated January 1, 1998,  
11 and as amended. Under the Carpenters Health Trust, Lewis Concrete agreed to, among  
12 other things:

- 13           ▪       Submit its reports on or before the 15th day of the calendar month  
14 following the month in which the contributions are payable, even if  
the company had no employees for that period of time;
- 15           ▪       Comply with a request to submit any information, data, report or other  
16 documents reasonably relevant to and suitable for purposes of  
administration of the trust, as requested by the trust funds;
- 17           ▪       Payment of liquidated damages of twelve percent (12%) on all  
18 delinquent contributions;
- 19           ▪       Payment of interest of not less than seven percent (7%), nor more than  
eighteen percent (18%); and
- 20           ▪       Payment of the trust fund's attorney fees, costs of collection, and  
auditor's fees.

21           3.8     Lewis Concrete's obligations under the Carpenters Retirement Trust are set  
22 forth in Article II, Sections 8 – 13, and Article IV, Section 17 of the Revised Trust  
23

1 Agreement of the Carpenters Retirement Trust of Western Washington, dated January 1,  
 2 1998, and as amended. Under the Carpenters Retirement Trust, Lewis Concrete agreed to,  
 3 among other things:

- 4           ▪ Submit its reports on or before the due date specified in the trust  
 5 agreement or as set by the trustees, even if the company had no  
 employees for that period of time;
- 6           ▪ Comply with a request to submit any information, data, report or other  
 7 documents reasonably relevant to and suitable for purposes of  
 administration of the trust, as requested by the trust funds;
- 8           ▪ Payment of liquidated damages of twelve percent (12%) on all  
 9 delinquent contributions;
- 10          ▪ Payment of interest of not less than seven percent (7%), nor more than  
 11 eighteen percent (18%); and
- 12          ▪ Payment of the trust fund's attorney fees, costs of collection, and  
 13 auditor's fees.

14           3.9 Lewis Concrete's obligations under the Carpenters Vacation Trust are set  
 15 forth in Article II, Sections 8 – 13, and Article IV, Section 17 of the Revised Trust  
 16 Agreement of Carpenters-Employers Vacation Trust of Western Washington, dated January  
 17 1, 1998, and as amended. Under the Carpenters Vacation Trust, Lewis Concrete agreed to,  
 18 among other things:

- 19           ▪ Submit its reports on or before the due date specified in the trust  
 20 agreement or as set by the trustees, even if the company had no  
 employees for that period of time;
- 21           ▪ Comply with a request to submit any information, data, report or other  
 22 documents reasonably relevant to and suitable for purposes of  
 administration of the trust, as requested by the trust funds;
- 23           ▪ Payment of liquidated damages of twelve percent (12%) on all  
 delinquent contributions;
- Payment of interest of not less than seven percent (7%), nor more than  
 eighteen percent (18%); and

- Payment of the trust fund's attorney fees, costs of collection, and auditor's fees.

3.10 Lewis Concrete's obligations under the Carpenters Apprenticeship Trust are set forth in Article II, Sections 8 – 13, and Article IV, Section 17 of the Revised Trust Agreement of Carpenters-Employers Apprenticeship and Training Trust Fund of Western Washington, dated January 1, 1998, and as amended. Under the Carpenters Apprenticeship Trust, Lewis Concrete agreed to, among other things:

- Submit its reports on or before the due date specified in the trust agreement or as set by the trustees, even if the company had no employees for that period of time;
- Comply with a request to submit any information, data, report or other documents reasonably relevant to and suitable for purposes of administration of the trust, as requested by the trust funds;
- Payment of liquidated damages of twelve percent (12%) on all delinquent contributions;
- Payment of interest of not less than seven percent (7%), nor more than eighteen percent (18%); and
- Payment of the trust fund's attorney fees, costs of collection, and auditor's fees.

3.11 Following execution of the Project Agreement, Lewis Concrete hired union workers subject to the scope of work contained in the Master Labor Agreement and began the monthly reporting and payment of contributions to the Carpenters Trusts.

3.12 In 2017, the Carpenters Trusts selected Lewis Concrete for an audit of its payroll and related business records to determine whether the company had complied with its obligations to the Trust Funds. The initial period of the audit was January 1, 2015 through December 31, 2015.

3.13 On April 10, 2017, after Lewis Concrete provided the Carpenters Trusts with the requested payroll and related business records, the auditor, Anastasi Moore & Martin, PLLC (the “Auditor”) issued its *Independent Accountants’ Report on Applying Agreed-Upon Procedures* (the “AUPR”). The auditor concluded in the AUPR that Lewis Concrete owed the Carpenters Trusts \$3,660.97, consisting of \$2,286.96 in underpaid/underreported fringe benefit contributions, \$274.44 in liquidated damages, \$424.57 in accrued interest, and \$675.00 in audit fees.

3.14 Lewis Concrete did not challenge the conclusions contained in the AUPR nor did the company pay the amounts the Auditor concluded were due.

3.15 On September 11, 2017, counsel made written demand upon Lewis Concrete for payment of the amounts contained in the AUPR. Lewis Concrete did not respond to counsel in any fashion.

3.16 A subsequent demand was made upon Lewis Concrete on September 27, 2017. As before, Lewis Concrete did not respond to counsel.

3.17 As of the date of this complaint, Lewis Concrete has not paid the amounts due and owing to the Carpenters Trusts, as set forth in the AUPR.

#### **IV. CAUSES OF ACTION**

##### **First Cause of Action (Breach of Contract)**

4.1 The Carpenters Trusts reallege each and every allegation contained in ¶¶ 3.1 – 3.17, above.

4.2 Lewis Concrete’s failure to fully pay fringe benefit contributions it owes to the Carpenters Trusts constitutes a breach of terms of the labor and trust agreements

1 between the Union and Lewis Concrete, to which the Carpenters Trusts are beneficiaries  
2 and/or parties.

3 4.3 As a result of Lewis Concrete's breach, the Carpenters Trusts have been  
4 damaged in an amount to be proven at trial, but not less than \$2,286.96, plus liquidated  
5 damages, interest, audit fees, attorney fees, and costs of enforcement and collection.

6 **Second Cause of Action**  
7 **(Violation of ERISA)**

8 4.4 The Carpenters Trusts reallege each and every allegation contained in ¶¶3.1 –  
9 3.17, above.

10 4.5 Lewis Concrete's failure to fully pay fringe benefit contributions it owes to  
11 the Carpenters Trusts violates §515 ERISA, codified at 29 U.S.C. §1145 and gives rise to a  
12 cause of action under §502(g)(2)(E) ERISA, codified at 29 U.S.C. §1132(a)(3).

13 4.6 As a result of Lewis Concrete's failure violation of ERISA, the Carpenters  
14 Trusts have been damaged in an amount to be proven at trial, but not less than \$2,286.96,  
15 plus liquidated damages, interest, audit fees, attorney fees, and costs of enforcement and  
16 collection.

17 **V. RELIEF REQUESTED**

18 The Carpenters Trusts respectfully request the Court grant the following:

- 19 A. Judgment in favor of the Carpenters Trusts, in an amount to be determined at  
20 trial, but not less than \$2,286.96, representing contributions shown to be due  
under the Agreed-Upon Procedures Report;
- 21 B. Judgment in favor of the Carpenters Trusts, in an amount to be determined at  
22 trial, but not less than \$274.44 in liquidated damages, representing liquidated  
23 shown to be due under the Agreed-Upon Procedures Report, or double the  
accrued, prejudgment interest, whichever is higher, pursuant to 29 U.S.C.  
§1132(g)(2)(C);



- 1 C. Judgment in favor of the Carpenters Trusts, in an amount to be determined at  
2 trial, but not less than \$424.57 representing accrued prejudgment interest  
3 shown to be due under the Agreed-Upon Procedures Report;
- 4 D. Judgment in favor of the Carpenters Trusts, in an amount to be determined at  
5 trial, but not less than \$675.00 in audit fees shown to be due under the  
6 Agreed-Upon Procedures Report;
- 7 E. An award of attorney fees and costs, as authorized by the labor and trust  
8 agreements to which Lewis Concrete is a party, and as authorized under 29  
9 U.S.C. §1132(g)(2)(D);
- 10 F. Post-judgment interest at the 12% rate specified in the applicable Trust  
11 Agreements, as authorized under 29 U.S.C. §1132(g)(2); and
- 12 G. Any other such relief under federal law or as is just and equitable.

13 Dated: January 29, 2018.

14 s/ Jeffrey G. Maxwell

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